

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 979 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 - No

STATE OF GUJARAT

Versus

RABARI PANCH SATA

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/04/98

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

State has preferred this appeal against the order of acquittal recorded by Addl. Sessions Judge, Bhavnagar in Sessions Case No.167 of 1993 on 2-8-1997. The respondents-accused were tried for the offences punishable under Secs.302, 147, 148, 149 of Indian Penal

Code.

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#. It is the prosecution case that in the early morning of 9-3-1993, the complainant and his father have gone to Sanosara. At about 10.30, both were coming back towards the Village Krushnapura and when they reached near the farm of Rajput Parsothambhai Lakhmanbhai of Sanosara, accused have come with arms to abduct the complainant and his father. Some exchange of words took place there and one Pola Teja gave blows of 'farsi' on father of the complainant. Other accused also gave severe blows. Because of shouting, Ramjibhai Bhanabhai, Savjibhai Bhanabhai and Parsothambhai Lakhmanbhai came there and on seeing them, accused have ran away with their weapons. Thereafter, father of the complainant was taken to a hospital at Bhavnagar for treatment where he was declared dead. A complaint was lodged to that effect. Police has investigated the matter and on completion of investigation, charge-sheet was filed and charge was framed against the accused after having committed the accused to the Court of Sessions. Accused pleaded not guilty to the charge and claimed to be tried.

#. After hearing the learned advocates of the parties and on appreciation of evidence, learned Addl. Sessions Judge has acquitted the accused against which, the present appeal is preferred.

#. Learned Addl. Public Prosecutor, after going through the record and proceedings, argued that merely because the eye witnesses are relatives of the deceased, their evidence should not be discarded by the trial Court and trial Court ought to have believed the above witnesses as they are the witnesses of the incident.

#. We are aware that merely because the eye witnesses are relatives of the deceased, their evidence should not be discarded. While appreciating their evidence, learned Addl. Sessions Judge has rightly come to the conclusion that evidence of Mahibatbhai Jivabhai and Devuben Mahibatbhai indicates that they are chance witnesses. It is to be noted that the bloodstain was not found on the road in front of farm of Parsothambhai, where the incident is alleged to have taken place according to the oral evidence of witnesses, but at a distance of 60 feet away in the farm of one Jaisinghbhai. Thus, there is a doubt regarding the scene of offence. Over and above, the doctor, who has performed the post-mortem on the deceased, opined that the injury received by the deceased cannot be possible with the weapons, which are alleged to

have been used by the accused.

#. This Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. It is under the above circumstances that appeal is required to be dismissed and is accordingly dismissed.

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